

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
AUG 29 11:11 AM '95

DISPATCHED BY
MM Docket No. 95-138

In the Matter of

Amendment of Section 73.202(b) RM-8684
Table of Allotments,
FM Broadcast Stations.
(Casper, Wyoming)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 16, 1995; Released: August 28, 1995

Comment Date: October 19, 1995

Reply Comment Date: November 3, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making jointly filed by Bruce L Erickson ("Erickson"), Hart Mountain Media, Inc. ("Hart") and Rule Communications ("Rule") (jointly referred to as "petitioners"), proposing the allotment of Channels 273A and 284A at Casper, Wyoming, as potentially the community's sixth and seventh local commercial FM transmission services. If Channels 273A and 284A are allotted at Casper with cut-off protection, petitioners also request that Rule be allowed to amend its application to specify operation on Channel 273A in lieu of Channel 247A, and that Hart be allowed to amend its application to specify operation on Channel 284A in lieu of Channel 247A. Hart and Rule state their intention to apply for Channels 273A and 284A, respectively, if allotted to Casper with cut-off protection.

2. In support of their proposal, petitioners state that the allotment of Channels 273A and 284A will eliminate the mutual exclusivity among the three pending applications for a new Class A station at Casper. Petitioners further state that at the present time, there is no basis upon which to either designate the applications for a comparative hearing, or to otherwise resolve the mutually exclusive applications, citing *Bechtel v. Federal Communications Commission*, 10 F.3d 875 (D.C. Cir. 1993). Accordingly, petitioners assert that the allotment of Channels 273A and 284A at Casper, will allow all three pending applications to be granted. Petitioners contend that this proposal is consistent with the Commission's policy to resolve conflict between applicants to provide the community with additional FM transmission service, and would also avoid a comparative hearing, citing *Cheyenne and Saratoga, Wyoming*, 10 FCC Rcd 6722 (1995); *Albion, Nebraska*, 10 FCC Rcd 3183 (1995), *rev. denied*, FCC 95-265, released June 27, 1995; *Lander, Wyoming*, 46 F.R. 39605, August 4, 1981. Additionally, in the event there are additional expressions of interest for a Class

A channel at Casper, petitioners advise that Channel 299A is available. Therefore, petitioners urge that Channel 273A and 284A be allotted at Casper for Rule and Hart, respectively, with cut-off protection, and that they be allowed to amend their applications accordingly. Thus, the grant of this proposal, will leave Erickson as a singleton for Channel 247A at Casper, and thereby resolving the mutual exclusivity for Channel 247A.

3. We believe that the proposal warrants consideration since it could potentially provide the community with its sixth and seventh local commercial FM transmission services. Additionally, the allotment of Channels 273A and 284A at Casper would allow Rule and Hart to amend their applications for Channel 247A at Casper, thereby resolving the mutual exclusivity for the channel. An engineering analysis has determined that Channels 273A and 284A can be allotted to Casper in compliance with the Commission's minimum distance separation requirements at city reference coordinates.¹ Since it appears that there is an additional equivalent class channel available for other expressions of interest at Casper, we shall propose to allow Rule and Hart to amend their applications to specify operation on Channels 273A and 284A, respectively, with cut-off protection.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Casper,	233C, 238C, 247A	233C, 238C, 247A
Wyoming	279C, 295C	273A, 279C, 284A, 295C

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **October 19, 1995**, and reply comments on or before **November 3, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following:

John R. Wilner, Esq.
Bryan Cave, L.L.P.
700 13th Street, N.W.
Washington, D.C. 20005-3960
(Counsel for Bruce L. Erickson)

¹ The coordinates for Channels 273A and 284A at Casper are

North Latitude 42-50-48 and West Longitude 106-18-48.

Barry Skidelsky, Esq.
655 Madison Avenue
19th Floor
New York, New York 10021
(Counsel for Hart Mountain Media, Inc.)

John F. Garziglia, Esq.
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Washington, D.C. 20006
(Counsel for Rule Communications)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.